
(2012) 01 AHC CK 0548
In the Allahabad High Court
Case No : Criminal Revision No. 3186 of 2006

Subhash Chand Gupta and other	Vs	APPELLANT
State of U.P. and Another		RESPONDENT

Date of Decision : 18-01-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Criminal Procedure Code, 1973 (CrPC) — Section 200, 207, 207A, 209, 226
Dowry Prohibition Act, 1961 — Section 3, 4
Evidence Act, 1872 — Section 32
Penal Code, 1860 (IPC) — Section 109, 120B, 302, 304B, 306

Citation : (2012) 1 ACR 1114

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vinod Prasad, J.—Three revisionists Subhash Chand Gupta, Pramod Kumar Agrawal and Anirudh Kumar Agrawal have come up to this Court, in revision, challenging impugned order dated 09.05.2006 passed by Additional Session's Judge, court no. 4, Rampur, in Session Trial No. 16 of 2006, State Vs. Ramesh Chandra Gupta and three others, by which order, trial Judge has refused to discharge them u/s 227 Cr.P.C. and has charged them u/s 306/34 IPC in relation to Crime No.177 of 1999.

2. Before advertng to the grounds for challenge and revisionists contentions, a quick recapitulation of background facts indicate that Monika, d/o late Vinod Kumar Gupta had married Lokesh Kumar Goel on 21.2.1997 according to Hindu customs and rites, which marriage was solemnised by his elder uncle Ramesh Chandra Gupta with the co-operation of other relatives, since her father was already dead. Husband Lokesh and his parents Ram Kumar Goel and Smt. Asha Devi were dissatisfied with the dowry given in the marriage because of their rapacious attitude and were torturing Monika physically and mentally. Time and again, to save her from such harassment and torture, Monika's parental relatives

greased palm of her husband and in ?laws but greed for dowry had imbibed them so much that they strangled Monika to death on 19.1.1988, within eleven months of her nuptial tie. Regarding this crime F.I.R. of Crime No.14 of 1998, State vs. Ram Kumar Goel and others, u/s 304B, 498-A IPC and 3/4 D.P. Act was lodged at police station Swar, district Rampur, in which crime culprits were arrested and concluded investigation culminated in charge-sheeting them for the aforesaid offences. Case was committed to the Session's Court for trial as S.T. No.515 of 1999, State Vs. Ram Kumar Goel and others.

3. While the aforesaid trial was pending, 4.3.1998 was the date fixed for remand of the accused, on which date they were produced in Court but were severely abused, threatened and harassed. Husband Lokesh Kumar Goel could not withstand such a temerity and faux pas and therefore, after writing some letters, annexure 4-A to 4-C to the affidavit filed in support of this revision, he committed suicide on the intervening night between 10/11.3.98 inside jail. His cadaver was discovered next day morning, on 11.3.98, and a magisterial inquiry was ordered. During that inquiry, no allegation or suspicion was expressed against the revisionist and the inquiry concluded without fixing responsibility on the revisionists. Not being satisfied with the inaction against the murders of their son, father Ram Kumar Goel moved an application before National Human Rights Commission, vide Annexure No. 2 on 31.3.1998, alleging therein that the deceased was poisoned to death. Pending order by NHRC, father filed complaint case No. 763 of 1998, Ram Kumar Goel versus Ramesh Chandra Gupta and others, annexure no. 3, u/s 306/109/120B IPC, against three revisionist and Ramesh Chandra Gupta, on 28.5.1998, in the court of ACJM II, Rampur.

4. Following procedure of complaint case, statement of complainant u/s 200 Cr.P.C. and that of his witnesses Umesh Kumar Rastogi, vide Annexure No. 5, was recorded. On the strength of the complaint and statements, accused persons, including the revisionist were summoned to stand trial by the Magistrate and finding their case session's triable, learned Magistrate committed it to the Session's Court for trial where it was registered as S.T. No. 16 of 2006, State Vs. Ramesh Chandra Gupta and three others.

5. Observing Session's trial procedure, Additional Session's Judge, court no. 4, Rampur after hearing Public Prosecutor's opening address u/s 226 Cr.P.C., hereinafter, referred to as "code", considered the question of discharge u/s 227 and finding sufficient ground for prosecution of the accused refused to discharge them vide impugned order dated 9.5.2006 and on the same day charged them u/s 306/34 IPC. It is these orders, which are under challenge in the instant revision.

6. I have heard Sri Ram Jee Saxena, learned counsel for the revisionists as well as Sri I.M. Khan, learned counsel for the respondent no. 2 and Sri Patanjali Mishra and Sri K.N. Bajpai, learned counsel for the State respondent.

7. Assailing the impugned orders, it was submitted by Sri Saxena, that the complaint lodged by respondent no. 2 against the revisionists was totally

malafidy, vindictive and to wreck vengeance. After suicide by the deceased, during inquest vide Annexure No. 1, no complaint was made by respondent no. 2 against the revisionist nor any suicide note,(letters) written by the deceased were produced. Inquest memo does not contain any mention in that respect. In the complaint filed before NHRC, Annexure No. 2, no letter was filed and therefore, these letters Annexure 4-A to 4-C, are all cooked up and manufactured pieces of evidences, and on that basis revisionist prosecution should not be permitted to go on. The contention raised is that these letters are not in the hand writing of the deceased and subsequently they were fabricated. It is further submitted that for the first time reference of these letters was made in the complaint, Annexure No. 3, and therefore, credible material, for revisionist prosecution is absent and they should have been discharged. Further contention of Sri Saxena is that while considering discharge prayer, trial court has not recorded the finding that the letters were genuine and therefore, impugned order of framing charge and refusal to discharge order suffers from patent error of law and be set aside. It was further argued that so far as revisionist no. 3 Anirudh Kumar Agrawal is concerned, the letters written by the deceased does not make his reference at all and therefore, there was no credible evidence against him. In support of the contention that the entire prosecution story is a hokum, learned counsel, relied upon Annexure Nos. 6 to 8, which are statements of police constables. On the aforesaid submissions it was submitted that the revision be allowed and revisionist be discharged.

8. Conversely, respondent counsel and learned AGAs argued submitted that a bare perusal of the letters, Annexure No. 4-A to 4-C, brings out sufficient material against the accused and, if believed, they are, by themselves, sufficient to convict the revisionists and therefore, trial requires to be proceeded with and it cannot be nipped into it's bud at its very inception. They, therefore, argued that the instant revision be dismissed.

9. I have considered the arguments raised by both the sides. The scope of this revision lies in a very narrow compass. Whether at the stage of charge/discharge u/s 227 of the code, Session's Court is required to sift a weigh prosecution evidence vis-a-vis a defence plea to cut short prosecution case and discharge the accused? Or at that stage only a prima facie case has to be looked into requiring trial procedure to be adopted. The aforesaid legal aspect no longer remains res integra and has been subjected to many judicial binding precedence, perusal of which postulates that at the stage of framing of charge, Session's Court is required only to consider as to whether "there is sufficient ground for proceeding against the accused" or not?. If the Session's Court finds that there is sufficient ground for proceeding it cannot discharge the accused u/s 227 of the code, and has to proceed u/s 228 thereof. Words "there is sufficient ground for proceeding or not" has been explained time and again in various judicial pronouncements and residue of these decisions are that they only mean a prima facie case being disclosed against the accused which, if remains un-rebutted, will be sufficient for his conviction. If, taken as a whole on the face of it, the prosecution story

remains in a realm of suspicion and vacillating certainty, even then the charges has to be framed and prosecution has to be afforded an opportunity to substantiate its case. It is only in cases where entire prosecution version and evidences, as was disclosed in the case diary or in statements of witnesses, even if, remains un-cross-examined and challenged, and even then it discloses no offence of any kind, that the accused can be discharged. Without dilating further on this aspect, for concise discussion, some of the decisions of the apex court and of this court are referred to below:-

In *P. Vijayan Vs. State of Kerala and Another*, it has been observed by the apex court as under:-

21. As discussed earlier, Section 227 in the new Code confers special power on the Judge to discharge an accused at the threshold if upon consideration of the records and documents, he find that "there is not sufficient ground" for proceeding against the accused. In other words, his consideration of the record and document at that stage is for the limited purpose of ascertaining whether or not there is sufficient ground for proceeding against the accused. If the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge u/s 228, if not, he will discharge the accused. This provision was introduced in the Code to avoid wastage of public time which did not disclose a prima facie case and to save the accused from avoidable harassment and expenditure.

22. In the case on hand, though, the learned Trial Judge has not assigned detailed reasons for dismissing the discharge petition filed u/s 227, it is clear from his order that after consideration of the relevant materials charge had been framed for offence u/s 302 read with Section 34 IPC and because of the same, he dismissed the discharge petition. After evaluating the materials produced by the prosecution and after considering the probability of the case, the Judge being satisfied by the existence of sufficient grounds against the appellant and another accused framed a charge. Whether the materials at the hands of the prosecution are sufficient or not are matters for trial. At this stage, it cannot be claimed that there is no sufficient ground for proceeding against the appellant and discharge is the only remedy. Further, whether the trial will end in conviction or acquittal is also immaterial. All these relevant aspects have been carefully considered by the High Court and it rightly affirmed the order passed by the Trial Judge dismissing the discharge petition filed by A3-appellant herein. We fully agree with the said conclusion.

10. In *Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra*, it has been observed by the apex court as under:-

15. It is trite that the words "not sufficient ground for proceeding against the accused" appearing in the Section postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing this fact, the

Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, makes a conviction reasonably possible. [See: State of Bihar vs. Ramesh Singh and Prafulla Kumar Samal (supra)]

11. In State of Orissa Vs. Debendra Nath Padhi, it has been held by the apex court as under:-

8. What is to the meaning of the expression "the record of the case" as used in Section 227 of the Code. Though the word "case" is not defined in the Code but Section 209 throws light on the interpretation to be placed on the said word. Section 209 which deals with the commitment of case to Court of Session when offence is triable exclusively by it, inter alia, provides that when it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall commit "the case" to the Court of Session and send to that Court "the record of the the case" and the document and articles, if any, which are to be produced in evidence and notify the Public Prosecutor of the commitment of the case to the Court of Session. It is evident that the record of the case and documents submitted therewith as postulated in Section 227 relate to the case and the documents referred in Section 209. That is the plain meaning of Section 227 read with Section 209 of the Code. No provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial.

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17. As opposed to the aforesaid legal position, the learned counsel appearing for the accused contended that the procedure which deprives the accused to seek discharge at the initial stage by filing unimpeachable and unassailable material of sterling quality would be illegal and violative of Article 21 of the Constitution since that would result in the accused having to face the trial for long number of years despite the fact that he is liable to be discharged if granted an opportunity to produce the material and on perusal thereof by the Court. The contention is that such an interpretation of Sections 227 and 239 of the Code would run the risk of those provisions being declared ultra vires of Articles 14 and 21 of the Constitution and to save the said provisions from being declared ultra vires, the reasonable interpretation to be placed thereupon is the one which gives a right, howsoever, limited that right may be, to the accused to produce unimpeachable and unassailable material to show his innocence at the stage of framing charge.

18. We are unable to accept the aforesaid contention. The reliance on Articles 14 and 21 is misplaced. The scheme of the Code and object with which Section 227 was incorporated and Sections 207 and 207(A) omitted have already been noticed. Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini trial at the stage of framing of charge. That would defeat the object of the Code. It is well-settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression "hearing the submissions of the accused" cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the state of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police.

12. In State of Bihar Vs. Ramesh Singh, it has been held by the apex court as under:-

4. Under S. 226 of the Code while opening the case for the prosecution the prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under S. 227 or S. 228 of the Code. If "the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", so enjoined by S. 227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which.

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(b) in exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in S. 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and

the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under S. 227 or S. 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding *prima facie* whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under S. 227 or S. 228, then in such a situation ordinarily and generally the order which will have to be made will be one under S. 228 and not under S. 227.

5. In *Nirmaljit Singh Hoon Vs. The State of West Bengal and Another*, Shelat J., delivering the judgment on behalf of the majority of the Court referred at page 79 of the report to the earlier decisions of this Court in *Chandra Deo Singh Vs. Prokash Chandra Bose and Another*, where this Court was held to have liad down with reference to the similar provisions contained in Ss. 202 and 203 of the Code of Criminal Procedure, 1898 "that the test was whether there was sufficient ground for proceeding and not whether there was sufficient ground for conviction, and observed that where there was *prima facie* evidence, even though the person charged of an offence in the complaint might have a defence, the matter had to be left to be decided by the appropriate forum at the appropriate stage and issue of a process could not be refused". Illustratively,

Shelat J., further added "Unless, therefore, the Magistrate finds that the evidence led before him is self-contradictory, or intrinsically untrustworthy, process cannot be refused if that evidence makes out a prima facie case.

13. From the above law laid down by the Apex Court, case of the revisionists has to be considered within the ambit and scope of the power vested in the trial Judge in the present case.

14. Conducting such an exercise, it is seen that the case of the complainant father is that his son was coerced to commit suicide by the revisionists and another summoned accused. They used to abuse and threaten them. Deceased husband was unable to bear such a temerity and faux pas spat on the faces of his parents, as in his knowledge, entire allegations of causing dowry death and dowry demand was absolutely false. Deceased husband could not tolerate such a vicious attitude adopted by the revisionists. He was asked by the revisionists, as is perceptibly clear from the contents of various letters Annexures 4-A to 4-C, that if he commit suicide they will withdraw the case against his parents. This accosting had tormented the deceased so much that he decided to redeem his parents from their miseries of trial by ending his life. He was pushed against the wall where he had no option left but to take extreme step. As a son, he was mentally tormented by the attitude of the revisionists and only way left for him was to succumb to their promises and commit suicide, after writing the letters, Annexure No. 4-A to 4-C, in which he had mentioned that the revisionists had accosted him that if he will commit suicide, they will exonerate his parents. These letters were addressed to the Superintendent of Police, to the District Judge and to the revisionists. In the letter written to the revisionists it was mentioned by the deceased that whatever had been told by them, on 4.3.98, that, if he will commit suicide, they will withdraw the case against his parents, and therefore, he is fulfilling their desire and he hoped that revisionists will also fulfil their promise of withdrawing their case against his parents and they will also abide by their promises and will not resile from their such an assurance. This is nothing but abatement and compelling the deceased to commit suicide.

15. Furthermore, there is an another important aspect of the entire incident. Letters written by the deceased, Annexure 4-A to 4-C, are in the nature of his dying declaration or at least, circumstances leading to cause of his death. These letters are admissible in evidence u/s 32 of the Evidence Act. Singularly these letters, if proved to be genuine and voluntary pieces of evidence, are sufficient to nail in the revisionist for the crime committed by them. For this, the trial of the revisionists has to take place and cannot be scuttled at its very inception. A legitimate prosecution instituted on prima facie material cannot be thwarted at its inception by taking into consideration the defence of the accused.

16. Revisionist counsel made strenuous effort to bring home the submission that the letters written by the deceased, referred to above were fabricated and manufactured. Without permitting prosecution to prove the genuineness and authenticity of these letters, defence contention on this aspect cannot be

accepted as correct. Prosecution has to be given a green signal to establish the charge. Forming an opinion against the prosecution version, without affording it an opportunity to substantiate its case, will be negation of the principle of audi alteram partem. Prosecution story cannot be condemned without affording such an opportunity. In such a view, the submission of learned counsel for the revisionists is unappealing and is hereby repelled.

17. Whether the letters in question were produced at the time of the inquest on the cadaver of the deceased or not, whether they are manufactured or cooked up, whether they were sent, along with the complaint, to NHRC are all facets of trial to be looked into by the trial Judge. Submission that these letters were never sent to NHRC is against the contents of the complaint lodged with NHRC, Annexure No. 2. There is a reference of a suicide note in the aforesaid complaint and copy of the same along with the inquest memo was also sent to it. It is a case where an under trial accused had committed suicide inside jail premises after writing suicide note letters. The matter requires full-fledged prosecution, as there is prima facie evidence against the revisionists no. 1 and 2.

18. In my above view, I draw support from Apex Court decision in *Didigam Bikshapathi and Another Vs. State of A.P.*, wherein Apex Court, on somewhat similar facts and circumstance has been pleased to observe as under:-

12. In the instant case the suicide note clearly refers to the acts of the accused-appellants and the roles played by them. Therefore, the High Court rightly rejected the prayer of exercise of power u/s 482 of the Code. We make it clear that any observation made by the High Court and by us while dismissing of the present appeal shall be construed to be determinative factor in the trial.

19. However Last submission of learned counsel for the revisionists in respect of revisionist no.3 Anirudh Kumar Agrawal, who is mausa of the deceased wife, however, has got some substance. None of the letters written by the deceased, Annexure 4-A to 4-C, makes his reference at all. There is no credible evidence against him on the record. Learned counsel for the respondent complainant as well as learned AGA also could not bring to my notice, any prima facie evidence against him. It seems that merely because of his relationship with the deceased wife, that he has been made an accused. Since there is no prima facie case against the said revisionists, at least he cannot be permitted to stand the rigmarole of trial and be allowed to be harassed.

20. In view of above discussion, so far as revisionist nos. 1 and 2, namely, Subhash Chand Gupta and Pramod Kumar Agrawal are concerned, their revision stands dismissed and the impugned order in their respect stands affirmed.

21. Revision by revisionist no. 3 Anirudh Kumar Agrawal is hereby allowed, impugned order in his respect is quashed. His discharge prayer is allowed and he is discharged from the trial.